



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TRG
Docket No: 4395-02
6 December 2002

[REDACTED]

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This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10 of the United States Code section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 26 November 2002. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

You enlisted in the Marine Corps on 18 August 1967 at age 18. On 6 February 1968 you reported to your unit in Vietnam where you participated in eight combat operations and were awarded the Combat Action Ribbon.

The record shows that you were an unauthorized absentee from 4 November to 18 November 1968 although there is no disciplinary action in the record. A special court-martial convened on 27 February 1969 and convicted you of an unauthorized absence of about nine days. The court sentenced you to reduction to pay grade E-1, forfeitures of pay and two months hard labor without confinement. You left Vietnam on 23 March 1969.

On 23 May 1969 you received nonjudicial punishment for an unauthorized absence of about 18 days. Subsequently, you were an unauthorized absentee from 28 May to 8 October 1969 and from 13 November 1969 to 16 July 1970.

Your military record shows that you submitted a written request for an undesirable discharge in order to avoid trial by court-

martial for the two foregoing periods of unauthorized absence totaling about 376 days. Your record also shows that prior to submitting this request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. The Board found that your request was granted on 8 September 1970 and, as a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. You were discharged on 16 September 1970.

On 5 July 1977 your discharge was upgraded to general under the provisions of the Special Discharge Review Program (SDRP). However, Public Law 95-126 required that all SDRP discharges be again reviewed and affirmed under traditional standards of review before there was an entitlement to veterans benefits. Your case was not affirmed under traditional standards.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth, limited education, low score on the aptitude test, and combat service in Vietnam. The Board also considered your contention that you were mentally ill and were suffering from Post Traumatic Stress Disorder (PTSD). The Board found that these factors were not sufficient to warrant recharacterization of your discharge given your record of misconduct and especially your request for discharge to avoid trial for the offenses. While it is true that you were diagnosed with a paranoid personality disorder there was no finding that you were not responsible for your actions or incompetent to stand trial for your offenses. Further, PTSD is not considered to be an excuse for misconduct. The Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that you received the benefit of your bargain when your request for discharge was granted and you should not be permitted to change it now. The Board concluded that your discharge was proper as issued and no change is warranted.

Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval

record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director